

**METROPOLITAN NASHVILLE-DAVIDSON COUNTY
TRANSPORTATION LICENSING COMMISSION**

**Minutes of
February 23, 2010**

The Metropolitan Nashville-Davidson County Transportation Licensing Commission (the "Commission") met in regular session on this date at the Metropolitan Courthouse. The Commissioners present were Chair Helen Rogers and Commissioners Jennifer Brundige, Mary Griffin, and Tom Turner (4). Also attending were Metro Legal advisor Corey Harkey; Commission staff members Milton Bowling, Walter Lawhorn and Lisa Steelman; and Brian McQuiston, Director-Executive Secretary to the Commission.

Chair Helen Rogers called the meeting to order. She asked that all present observe a minute of silence in honor of Earl LeMoine, owner of Carriage Enterprises, who had passed away in January.

Chair Helen Rogers led the Pledge of Allegiance and read the Notice of Appeal statement, advising of the right to appeal decisions of the Transportation Licensing Commission.

The minutes of the January 26, 2010 meeting were approved as corrected.

APPLICATION FOR BOOTING LICENSE: PARKING ENFORCEMENT, LLC

Director McQuiston reported that the new booting ordinance required all applications for a booting service license to be brought to the Commission for decision, and that Parking Enforcement, LLC had applied for a license on January 12. He stated that the company operated a number of paid parking lots, and desired to perform booting on those lots. The director noted that the application was generally in order, and that he had talked with the applicant about specific items that should be addressed:

- A list to be provided of all garages and parking lots, so that they may be inspected for proper signage;
- Identification of attended/unattended lots, because the ordinance differentiated between the two types of lots with respect to ticketing and/or subsequent towing of booted vehicles;
- Inspection of any vehicles used;
- Correction of the immobilization notice enclosed in the application – to include the required fee for removal of the boot; and
- A staff recommendation that the receipt used by the booting service be amended, to include specific information about the booted vehicle – color/make, model and either VIN or license plate number. The purpose of this information was to ensure that complaints could be properly investigated, and to protect the booting service from spurious damage claims.

The director stated that these items could be verified by staff after approval by the Commission. He added that there were no other staff concerns with the applicants or their application.

Chair Helen Rogers asked if there was a difference between booting on their own property and calling for a wrecker company to come in to boot the vehicles. The director responded that wrecker companies could not perform booting. He added that it was possible for a booting company to apply for a license even if it did not own or operate a parking lot, and that the Commission could expect to receive such applications. **Chair Rogers** asked if a booting company could call for a wrecker to tow a vehicle after it was booted; the director responded that the ordinance included specific rules on how that could be done.

Terry Johnson, representing Parking Enforcement, LLC appeared with his partners. He provided a corrected copy of the immobilization notice, which included the maximum \$50 fee authorized by the ordinance. He also provided a list of the properties, designating which were attended and unattended. Director McQuiston asked about the unattended lots which were used for event parking. He noted that there had been problems with unauthorized individuals collecting money for parking of vehicles which were later directed to be towed by the legitimate property owners. He stated that even on temporary lots it was essential that signage be placed to assist vehicle owners to distinguish where they should/should not park. Mr. Johnson assured the Commission that his company had uniformed employees with badges at all of their events-only lots. **Commissioner Tom Turner** asked if the company's procedures for booting were available. Mr. Johnson stated that the ordinance procedures were very specific. He stated that before placing a boot on any vehicle the company used the Clancy system's handheld device to determine if a vehicle had been previously ticketed. He added that the employees also used smart phones to take pictures of the vehicles and wheels before the boot was installed and after the boot was removed; this provided a record of the booting and condition of each vehicle. **Commissioner Jennifer Brundige** asked if the insurance policy listed the metropolitan government as an additional insured. It was noted that this was missing from the certificate included in the packet. Mr. Johnson provided a corrected certificate. Inspector Bowling asked when the company would anticipate towing a booted vehicle. Mr. Johnson responded that the company's goal would be to avoid towing any vehicles, unless it was abandoned for 2-3 days on the property. Director McQuiston read sections of the booting ordinance related to the subsequent towing of booted vehicles, and noted that there was no financial advantage to the booting company if a booted vehicle was towed.

Commissioner Turner moved to approve the application, subject to the corrections and inspections recommended by the staff. **Commissioner Mary Griffin** seconded, and the motion passed (3-0).

WRECKER COMPANY DISCIPLINARY HEARING: DUKE'S WRECKER SERVICE

Director McQuiston stated that the Commission had held a disciplinary hearing for Duke's Wrecker Service a few months before, for similar issues. He stated that the charge was for towing two vehicles without the vehicle owners' consent from private property in Davidson County to a storage lot located outside of Davidson County, which was a violation of the Code. He stated that, similar to the earlier cases, these vehicles had been reported as stolen in Davidson County, but were not recovered until long afterward when they were located by Goodlettsville Police at the Duke's Wrecker Service lot in Sumner County. The director stated that Duke's Wrecker Service was not authorized to perform nonconsent towing because the company did not have a storage

lot in Davidson County. Director McQuiston stated that at the September 2009 disciplinary hearing Mr. Duke had argued that he did not understand why his company could not perform nonconsent towing, because his business was located only a short distance outside of Davidson County. The director referred to the minutes of the Commission's December 2008 meeting; and pointed out that the Commission had made it very clear to Mr. Duke then that he could not perform nonconsent towing because he did not have a storage lot in Davidson County.

The director noted that the Commission had suspended Duke's license at the September 2009 hearing, but that decision had been stayed pending a decision on their appeal. He added that in December 2009, Duke's had renewed its general wrecker license.

Director McQuiston reported that in December 2009 and January 2010 Goodlettsville Police had recovered two more vehicles from the Duke's lot; both had been reported as stolen after being towed without the owners' consent from private property in Davidson County. The director provided documents from the police department and copies of the Duke's tow slips related to these tows:

- Vehicle 1 – Chevrolet van towed on February 16, 2009 from Wal-Mart in Rivergate. Reported as stolen. Recovered by Goodlettsville PD at Duke's storage lot in Sumner County in December 2009. Police attempted to notify the vehicle owner, but were unsuccessful.
- Vehicle 2 – Toyota Camry towed on August 14, 2009 from Tulip Grove apartments in Hermitage. Reported as stolen. Recovered by Goodlettsville PD at Duke's storage lot in Sumner County in January 2010.

The director pointed out that the second vehicle had been towed on August 14, 2009; this was after Mr. Duke had received notices on July 16 and July 21, 2009 that he was to appear before the Commission for a disciplinary hearing related to towing without the owners' consent from private property in Davidson County to his lot in Sumner County.

Charles Duke, Jr. appeared, with attorney Michael McGovern. Mr. McGovern argued that the Commission had already found Mr. Duke in violation for these offenses at the September 2009 hearing. He explained that at that meeting Mr. Duke had been asked when he had last towed vehicles from Davidson County to a location outside of Davidson County, and his client had responded "recently". Mr. McGovern stated that the tows at issue in this current hearing had been performed prior to that September 2009 hearing, and that he had already admitted to doing those tows. Mr. McGovern stated that his client had not done any tows from Davidson County since September 2009; so these additional tows had already been considered by the Commission when it sanctioned him in September. He argued therefore that these two tows were "merged" into violations for which Mr. Duke already had been sanctioned. **Chair Helen Rogers** asked if he was coming off his suspension; Director McQuiston responded that the suspension had been stayed pending decision on Mr. Duke's appeal.

Director McQuiston argued that he did not agree that the Commission's suspension order at the September hearing had anything to do with Mr. Duke's comment about other unspecified "recent" tows, but that it was related to charges of specific tows that were documented at that hearing. The director noted that Mr. Duke had filed an appeal, and must have had some reason to do so. He stated that the Commission understood that it did not make decisions on unspecified charges or issues that were not supported by evidence. He gave an example of someone being pulled over for a speeding violation; if that person admitted that he often exceeded the speed limit, that admission

alone probably would not be sufficient to uphold a verdict that he had been speeding on multiple undocumented occasions.

Mr. McGovern stated that the appeal was based on the constitutionality of the law itself, not the evidence provided on the specific tows.

Inspector Bowling asked why Mr. Duke had done nothing to notify the proper authorities that he had vehicles on his lot which had been reported as stolen. Mr. McGovern stated that Mr. Duke had not known that the vehicle had been reported as stolen. Inspector Bowling noted that owners whose vehicles were reported as stolen could have recovered their vehicles from Mr. Duke if he had reported them to authorities in September; instead they had to do without their vehicles for four months, before they were discovered on his lot in January. Mr. McGovern stated that this was "bad police work". Inspector Bowling refuted that, stating that it was because the vehicles had been towed out of the county. Mr. McGovern stated that it was because the police had not located the vehicles; he repeated that his client did not know in September that the vehicles had been reported as stolen.

Commissioner Tom Turner questioned Mr. McGovern about his comment concerning bad police work. He asked if Mr. McGovern was blaming the police for not finding a stolen vehicle when his client had towed it out of the county. Mr. McGovern did not apologize for the comment, but stated that it was an inter-jurisdiction problem.

Following discussion, **Commissioner Turner** moved to defer a decision until one month following the decision on the appeal of the Commission's September decision.

Commissioner Mary Griffin seconded, and the motion passed (3-0).

WRECKER DRIVER PERMIT APPLICATIONS:

John Ghee: Mr. Ghee failed to appear. **Commissioner Jennifer Brundige** moved to disapprove his application. **Commissioner Mary Griffin** seconded, and the motion passed (3-0).

Billy Hunter: Mr. Hunter appeared with Bob Poole. He stated that he had been in trouble from the time he was eighteen until he was 27, in 2005. He stated that he had finished an eight-year probation in September 2008, and had not been in any more trouble. **Chair Helen Rogers** asked Director McQuiston if Mr. Hunter had disclosed all of his offenses. The director responded that he had. He provided Commissioners with the record, which indicated twenty arrests between 1999 and 2005. **Commissioner Jennifer Brundige** asked Mr. Hunter where he would be working. He responded that he did not know, because he could not get anyone to hire him without a wrecker driver permit. He stated that he had worked at Tow Pro and West Nashville Wrecker Service before. **Chair Rogers** stated that with his record it would be necessary for a wrecker company owner to be willing to take responsibility for supervising him. She asked Mr. Poole if he owned a wrecker service; he stated that he did not. **Commissioner Mary Griffin** moved to disapprove his application. **Commissioner Jennifer Brundige** seconded, and the motion passed (3-0).

Scott Richardson: Mr. Richardson appeared with Jane Wandell, manager of Anchor Towing & Recovery. **Chair Helen Rogers** noted that he had applied earlier, but had failed to disclose his arrest history; then he had reapplied, with a complete disclosure. She asked Mr. Richardson if he had a place to work; he responded that he would work

for Anchor Towing & Recovery.

Inspector Bowling reported that following the earlier denial of Mr. Richardson's permit application, he had operated a wrecker without a permit. The inspector provided a copy of a Police Incident Report which showed that Mr. Richardson had been involved in an accident while driving an Anchor wrecker on December 6, 2009.

Chair Rogers asked Mr. Richardson why he had driven the wrecker without a permit. He stated that he was working in the shop, and was told to go pick up a car. Ms. Wandell stated that she was to blame; that the dispatch system had not distinguished between drivers and other employees. Mr. Richardson stated that he had been sitting still when the wrecker was struck by a drunk driver.

Commissioner Jennifer Brundige asked why he did not tell the dispatcher that he did not have a permit. He responded that he had not been working there very long, and was afraid to say no. **Commissioner Tom Turner** noted that Mr. Richardson had a permit until it expired on December 1, 2009.

Commissioner Turner moved to approve a permit, restricted to Anchor Towing & Recovery, with a probation period until it expires. **Commissioner Brundige** seconded for discussion. She expressed concern about the ability of Anchor Towing & Recovery to provide appropriate supervision. **Commissioner Mary Griffin** expressed concern about Mr. Richardson's being afraid to risk his job if he refused to drive a wrecker without a permit. **Commissioner Brundige** asked Mr. Richardson how long he had been driving a tow truck; he responded that he had thirteen years of experience, and had once owned his own tow truck. Director McQuiston asked about the wrecker he had been driving on the day of the accident; Mr. Richardson answered that it had been a 2-1/2 ton rollback. **Commissioner Mary Griffin** asked how he would respond if he was asked to do something else that was illegal; he answered by stating that he had been out of work for a long time. **Commissioner Brundige** expressed concern that, if he was approved for a permit that was restricted to Anchor, Mr. Richardson might find himself in a similar situation. Director McQuiston stated that Anchor was an emergency wrecker service; as such the Commission's expectations for Anchor to do the right thing should be higher than for a non-emergency company. The motion failed.

Commissioner Brundige moved to approve a permit until June 30, 2010 restricted to Anchor Towing & Recovery, and placing him on probation. **Commissioner Griffin** seconded, and the motion passed (3-0).

OTHER BUSINESS:

Director McQuiston stated that Earl LeMoine had passed away at age 80 after a lifetime in the carriage business, and was respected throughout the carriage industry. He had trained horses, built carriages, and been instrumental in developing the concept for combining carriage rides with historical and informational tours; as well as developing standards and regulations for the carriage industry in Nashville.

There were no further business, and the meeting was adjourned.

ATTEST:

Brian E. McQuiston
Director-Executive Secretary

APPROVED:

Helen S. Rogers
Chair